Supreme Court, U.S.
FILED
AUG 17 1994
OFFICE OF THE CLERK

No. 94-103

(3)

In The
Supreme Court of the United States

October Term, 1994

JOHN R. ADCOX, et al.,

Petitioners,

v.

TELEDYNE, INC., et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Sixth Circuit Court Of Appeals

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDINGS AND RULE 29.1 LIST

The defendant-respondents in the present case are Teledyne Monarch Rubber, a division of Teledyne Industries, Inc., which, in turn, is a wholly-owned subsidiary of Teledyne, Inc. ("Teledyne" hereinafter), the United Rubber, Cork, Linoleum and Plastic Workers of America International Union and United Rubber Workers Local Union No. 99 ("URW" hereinafter).

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BRIEF IN OPPOSITION

Respondents, Teledyne, Inc. and Teledyne Industries, Inc. Monarch Rubber Division, request that the Petition for Writ of Certiorari be denied.

COUNTERSTATEMENT OF THE CASE

The claim in this case is for a severance pay-type benefit—a "Special Distribution"—provided for in the "Service Award Agreement", a collective bargaining agreement between Teledyne and the URW, which expired on June 16, 1991 pursuant to a notice from Teledyne to the URW. (App. B-2.) The Special Distribution was payable upon permanent discontinuance of operations only to

employees with five years of service who were "not eligible for a pension under any pension plan" of Teledyne. (App. B-3, B-13 n.3.)

Amendments to Section 203(a) of ERISA, 29 U.S.C. § 1053, required the Teledyne Monarch Rubber Hourly Pension Plan (the "Pension Plan") to lower its vesting requirement to five years of service, effective as of January 1, 1989. (App. B-14; Pub. L. No. 99-514 § 1113(e)(2); J.A. 382.) Thus, at the time of the instant plant closure in 1991, all of the employees were entitled to at least a deferred vested pension benefit from the Pension Plan. (App. B-3.) Consequently, Teledyne consistently took the position with the URW during "effects" bargaining over the plant closure that none of the employees would be entitled to a Special Distribution. (App. B-2, B-3; J.A. 275-76.)

Following months of hotly contested collective bargaining, Teledyne and the URW negotiated a Plant Closing Agreement providing for costly benefits for the employees, including lump-sum pension benefits and a lifetime retiree medical program, but releasing any claim for the Special Distribution benefit. (App. B-3, B-4; J.A. 838-46, 845 ¶ 10.) The Plant Closing Agreement, as modified, was ratified by secret ballot on August 22, 1991. (App. B-4.)

Teledyne performed its obligations under the Plant Closing Agreement by paying out millions of dollars in lump-sum pension benefits to over three hundred fifty employees; establishing a lifetime retiree medical program costing more than one million dollars per year for many years into the future; and continuing medical coverage for employees not eligible for immediate retirement. (App. B-5; J.A. 357, 358.)

Plaintiffs/Petitioners, employees who had received benefits under the Plant Closing Agreement, then filed this suit against Teledyne and the URW, seeking to force Teledyne to pay the Special Distribution benefit, notwithstanding the release in the Plant Closing Agreement. Plaintiffs alleged jurisdiction under § 301 of the Labor Management Relations Act, arguing that the Plant Closing Agreement itself was a violation of purported preexisting rights to the Special Distribution.

On cross motions for summary judgment, the district court dismissed Plaintiffs' claims for lack of federal jurisdiction, and the Court of Appeals for the Sixth Circuit affirmed that ruling. (App. A-17, B-19.) The Sixth Circuit also held that (i) the URW had not violated any duty of fair representation as its actions were neither irrational nor taken in bad faith (App. B-12); (ii) Plaintiffs had no preexisting vested right to the Special Distribution (App. B-14); and (iii) Plaintiffs' claim of promissory estoppel against Teledyne failed as Plaintiffs did not allege Teledyne ever promised the Special Distribution and, thus, Plaintiffs could not show any justifiable reliance. (App. B-15.)

SUMMARY OF THE REASONS FOR DENYING THE WRIT

The Petition does not present any issues requiring review by this Court. Petitioners' primary reason for seeking the writ, an alleged split in the Circuits on the issue of whether a Federal Court has jurisdiction to determine the validity or existence of a labor agreement, is illusory, not real. It can be resolved on the basis of the facts of the case. The Sixth Circuit correctly decided that the federal courts do not have jurisdiction under § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), where, as here, it is alleged that a collective bargaining agreement

itself violated the employees' purported preexisting rights. Federal jurisdiction over such a claim was not intended by Congress, as evidenced by the plain language of § 301 and its legislative history.

No other Court of Appeals has decided the jurisdictional issue differently than the Sixth Circuit; in fact, the Third Circuit has decided the same issue in precisely the same way as the Sixth. The decisions cited in the Petition as an indication of an alleged split do not deal with the issue raised in this case.

Finally, other holdings by the Sixth Circuit in this case, notably, that the URW did not violate its duty of fair representation, and that Petitioners had no vested rights in the Service Award, establish that the result below would have been the same had the lower courts found jurisdiction under § 301. The nonjurisdictional questions presented for review by Petitioners deal with factual matters decided correctly by the Sixth Circuit. Those issues are not of any importance outside of this case. Accordingly, the Court should deny the Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

I. There Is No Reason For The Court To Review The Ruling Regarding § 301 Jurisdiction

Plaintiffs/Petitioners sought to assert a so-called "hybrid" § 301 claim which requires establishing that the employer violated a collective bargaining agreement and the Union violated its duty of fair representation. *See, e.g., Vaca v. Sipes,* 386 U.S. 171 (1967), and *Hines v. Anchor Motor Freight,* 424 U.S. 554, 570-71 (1976). However, the claim here was very unusual in that the existing collective

bargaining agreement was not alleged to have been violated. The Plant Closing Agreement released claims for the Special Distribution; hence, nonpayment of the Special Distribution was not a violation of that agreement by Teledyne. The Service Award Agreement, which contained the Special Distribution provisions, had expired before execution of the Plant Closing Agreement and almost six months before suit was filed. Thus, Plaintiffs contended that "preexisting rights" —*i.e.,* alleged vested rights in the Special Distribution, or alleged quasi-contractual rights based on a theory of promissory estoppel—had been violated and that the violation of those "preexisting rights" was the Plant Closing Agreement itself. Both the district court and the Sixth Circuit correctly decided that federal jurisdiction under § 301 of the LMRA did not lie with respect to the claim.

A. The Plain Words of § 301 and Its Purpose Precluded Federal Jurisdiction Over Petitioners' Claim.

Section 301 allows suit to be brought in the district courts "for violation of contracts between an employer and a labor organization". 29 U.S.C. § 185(a). The Congressional purpose of § 301 was to encourage collective bargaining by making collective bargaining agreements enforceable in the federal courts, *i.e.,* to allow suit for violation of such contracts. The Senate Report on the bill which became the LMRA stated with respect to § 301, "[c]onsequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the federal courts." S. Rep. No. 105, 80th Cong., 1st Sess., at 16 (1947). The House of Representatives' sentiments concerning its version of § 301 were similar to the Senate's:

"[w]hen labor organizations make contracts with employers, such organizations should be subject to the same judicial remedies and processes in respect of proceedings involving violations of such contracts as those applicable to all other citizens." H.R. Rep. No. 245, 80th Cong., 1st Sess., at 46 (1947). This Court, upon review of the legislative history of § 301 in *Dowd Box Co. v. Courtney*, 368 U.S. 502, 509 (1962), concluded that § 301 was part of a "far-reaching and many-faceted legislative effort to promote the achievement of industrial peace through encouragement and refinement of the collective bargaining process" by assuring "both parties to a collective bargaining agreement . . . that the contract they had negotiated would be honored." *Accord Textile Workers v. Lincoln Mills*, 353 U.S. 448, 452-54 (1957).

Instead of alleging "violation of a contract", Petitioners sought to allege a "violation by a contract", contending that purported rights under the expired collective bargaining agreement had been violated by the Plant Closing Agreement. Such a claim does not fall under the express wording of § 301, nor is it encompassed within the Congressional purpose for the statute. Given that collective bargaining agreements are typically negotiated every three years, with the rights of the parties changing and evolving from one agreement to the next, permitting suits under § 301 claiming the most recent agreement violates rights under earlier, expired agreements would never promote collective bargaining and achieve industrial peace. Here, Petitioners sought to overturn bargaining judgments made by the URW and ratified by the employees in order to hold Teledyne liable for doing no more than engaging in labor negotiations as required by law and carrying out the agreement reached, again, as required by law. *See* Section 8(d)

of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 158(d). The lower courts in this case were correct in holding that § 301 of the LMRA did not provide jurisdiction for such a claim.[1]

B. The Sixth Circuit, in Accord With the Third Circuit, Correctly Interpreted § 301.

Almost thirty years ago, the Third Circuit decided that § 301 did not provide jurisdiction for an action alleging violation of preexisting rights by a collective bargaining agreement. In *Adams v. Budd Co.*, 349 F.2d 368 (3d Cir. 1965), employees sued their employer and union under Section 301 alleging that an existing labor agreement violated "superseniority" rights granted by earlier, expired agreements. In holding there was no jurisdiction under § 301 for such a claim by employees, the Third Circuit explained that § 301 allowed redress for "violation of a collective bargaining agreement"; but, it did not allow redress for "an alleged violation by a labor contract of [independent, pre-agreement] rights. . . ." 349 F.2d at 370 (emphasis in original). The holding in *Adams* was followed by the Third Circuit in *Leskiw v. Local 1470, Int'l Bhd. of Elec. Workers*, 464 F.2d 721, 723 (3d Cir.), *cert. denied*,

[1]Teledyne submits that Petitioners' sole recourse, if any, was against the URW for alleged violation of the URW's duty of fair representation under § 9(a) of the NLRA, 29 U.S.C. § 159(a). Petitioners initially filed an unfair labor practice charge with the NLRB against the URW, but voluntarily withdrew it. Though Petitioners asserted in this suit that the URW violated its duty of fair representation, the lower courts found that that allegation was made simply to support their "hybrid" § 301 claim against Teledyne. In any event, the Sixth Circuit held, alternatively, that the URW's judgments were not made in bad faith and not so unreasonable as to violate its duty of fair representation. That ruling was wholly in accord with the decisions of this Court. *See e.g., Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953); *Air Line Pilots Ass'n Int'l v. O'Neill*, 499 U.S. 65 (1991).

409 U.S. 1041 (1972), and cited with approval more recently in *Mack Trucks, Inc. v. International Union, UAW*, 856 F.2d 579, 589 (3d Cir. 1988), *cert. denied*, 489 U.S. 1054 (1989).

The instant decision by the Sixth Circuit was based on its earlier ruling in *Heussner v. National Gypsum Co.*, 887 F.2d 672 (6th Cir. 1989), which, in turn, was in accord with the decisions of the Third Circuit. Employees in *Heussner* sued their union and employer under § 301 alleging that an existing labor agreement violated rights to severance pay under an earlier agreement. After noting that the Third Circuit in *Mack Trucks* had stated that "a party may not invoke Section 301(a) jurisdiction by asserting that a collective bargaining contract itself constituted a violation of other preexisting rights of employees," the Sixth Circuit ruled in *Heussner* that "we decline in this case to confer jurisdiction on the district court to determine whether the 1987 Agreement itself violated rights that Heussner previously possessed under the 1984 Agreement." *Heussner*, 887 F.2d at 676 n.2.[2]

As the facts in *Heussner* were virtually identical to the facts in the instant case, the Sixth Circuit did little more herein than cite *Heussner* as controlling the issue of § 301 jurisdiction. However, the Court of Appeals did explain that "[b]ecause [the Plant Closing] Agreement superseded the 1988 collective bargaining agreement, including the Service Award Agreement, upon which plaintiffs' § 301 claim against Teledyne depends, there was no breach here

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[2]The Court of Appeals for the First Circuit also has cited the Third Circuit's *Adams* decision with approval in denying § 301 jurisdiction for a claim alleging that a collective bargaining agreement violated the employees' preexisting right to be represented by another union. *Hernandez v. National Packing Co.*, 455 F.2d 1252, 1253 (1st Cir. 1972).

that would support a § 301 claim." (App. B-7.) Accordingly, the Sixth Circuit's interpretation of § 301 in this case comports with the language of the statute, its purpose and the decisions of the Third Circuit, all of which establish that a claim for violation of alleged rights under an expired labor agreement by a superseding labor agreement is not within the jurisdiction of the federal courts under § 301.

C. There Is No Divergence of Opinion Among the Courts of Appeals on the Issue Decided by the Sixth Circuit.

Petitioners incorrectly argue that other Courts of Appeals have decided the instant jurisdictional question differently than the Sixth Circuit. None of the decisions cited in the Petition hold that § 301 jurisdiction lies where the plaintiff claims preexisting rights were violated by a collective bargaining agreement. The decisions cited by Petitioners deal with the issue of whether a federal court has jurisdiction under § 301 to determine whether a contract "exists" as part of determining whether the contract was violated or is enforceable. *See Kozera v. Westchester-Fairfield Elec. Contractors,* 909 F.2d 48 (2d Cir. 1990), *cert. denied,* 498 U.S. 1084 (1991) (jurisdiction to find that a contract existed as it was signed by a union official with apparent authority); *Mack Trucks, Inc., supra* (jurisdiction to find a meeting of the minds between the parties created a contract even though the union refused to sign the formal document); *United Steelworkers v. Rome Indus.,* 437 F.2d 881 (5th Cir. 1970) (in an action under § 301 to enforce a "contract", the court had jurisdiction to find a contract did not exist due to lack of agreement on various proposals during labor negotiations); *International Bhd. of Elec. Workers, Local 481 v. Sign-Craft, Inc.,* 864 F.2d 499 (7th Cir. 1988) (jurisdiction to determine whether an employer

was covered by a contract negotiated by a multiemployer bargaining association); *Rozay's Transfer v. Local Freight Drivers, Local 208,* 850 F.2d 1321 (9th Cir. 1988), *cert. denied,* 490 U.S. 1030 (1989) (jurisdiction to determine no meeting of the minds between the parties due to misrepresentations by a union official); *McNally Pittsburg, Inc. v. International Ass'n of Bridge Workers,* 812 F.2d 615 (10th Cir. 1987) (court had jurisdiction to find a contract did not exist, as it was signed by mistake); *Board of Trustees v. Universal Enters., Inc.,* 751 F.2d 1177 (11th Cir. 1985) (jurisdiction to find a contract existed, as the employer was an alter-ego of a signatory company).

The issue whether a federal court has jurisdiction under § 301 to determine the "existence" of a collective bargaining agreement in a suit seeking to enforce the agreement is not raised in this case. First, the instant suit did not seek to enforce the Plant Closing Agreement. Moreover, the Plant Closing Agreement obviously existed: it was negotiated over a six-month period; it was ratified by the employees; the contract was reduced to writing and signed by the URW and Teledyne; and Teledyne performed its obligations under the contract, paying out millions of dollars in benefits to the employees before suit was brought. Neither Teledyne nor the URW ever claimed the contract did not exist, and both parties agree the Plant Closing Agreement provides for exactly what was intended.[3]

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[3]Petitioners' claim that the employees were no longer members of the URW when they ratified the Plant Closing Agreement is not relevant to the Agreement's existence. The URW was the bargaining representative under § 9(a) of the NLRA and thereby represented "employees" whether members of the Union or not. 29 U.S.C. § 159(a). *See also Huffman, supra,* 345 U.S. at 338; 29 U.S.C. §§ 152(3) and (9).

Therefore, the "contract existence" decisions cited by Petitioners are beside the point here. Certainly, the conclusion cannot be drawn that because the Sixth Circuit was not required to decide a "contract existence" issue, and did not decide it, that the Court of Appeals would not do so in an appropriate case. There is no lack of uniformity among the Circuits concerning the issue decided by the Sixth Circuit in this case.

D. The Alternative Findings by the Sixth Circuit Establish That the Decision on Jurisdiction Did Not Affect the Outcome of This Case.

The result in this case would have been exactly the same had the lower courts entertained jurisdiction of Petitioners' "hybrid" § 301 claim. Petitioners were required to prove a violation of a contract by Teledyne as well as violation of the URW's duty of fair representation. "The two claims are inextricably interdependent." *DelCostello v. International Bhd. of Teamsters,* 462 U.S. 151, 164-65 (1983); *United Parcel Serv., Inc. v. Mitchell,* 451 U.S. 56, 66-67 (1981); *Hines v. Anchor Motor Freight, Inc., 424 U.S. at 570-71.*

A union breaches its duty of fair representation only if its actions are either arbitrary, discriminatory, or in bad faith. *Air Line Pilots Ass'n Int'l v. O'Neill,* 499 U.S. 65 (1991). Here, based on the evidence presented, the Sixth Circuit found that the Union's actions were not irrational and not taken in bad faith, and that Petitioners could point to no evidence of hostility or animosity on the part of the Union. Since the Court of Appeals held that the URW had not violated its duty of fair representation, Petitioners' § 301 action necessarily failed whether or not the courts assumed jurisdiction. Thus, the jurisdictional issue raised by Petitioners is moot. Accordingly, the Petition should be

denied, as review of the jurisdictional issue will not affect the outcome of the case.

II. The Remaining Questions Presented Seek To Have This Court Review Factual Determinations Made By The Sixth Circuit

Petitioners frame their remaining three questions for review in terms of legal issues to be decided by this Court. However, a review of the Petition reveals that in each instance the Court would have to reverse factual determinations made by the lower courts before reaching any question of law. The Sixth Circuit found that the URW did not violate its duty of fair representation, rendering moot the second question presented for review. The Sixth Circuit held that Petitioners had no vested rights in the Special Distribution, making clear that the third question posed in the Petition is not raised in this case. Similarly, the issue posed by the Petition's fourth question is not applicable to this case, as the Sixth Circuit found that Petitioners' promissory estoppel argument was deficient in that Teledyne had not made any extracontractual promises about the Special Distribution to employees.[4]

This Court has ruled that it will "not grant certiorari to review evidence and discuss specific facts." *United States v. Johnston,* 268 U.S. 220, 227 (1925). The remaining three questions presented for review are all "fact bound" and of no importance outside of this case.

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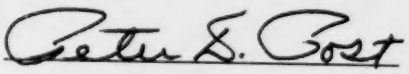
[4]The payments made in 1988 were a buy-out of employees' rights under an arbitration award arising out of the transfer of a product line to a nonunion facility and were not Special Distribution Benefits. (J.A. 394-95.) The list which calculated the amount of the Special Distribution was never provided to employees (J.A. 406), so it cannot be considered a representation by Teledyne on which Petitioners could have relied.

CONCLUSION

For the reasons hereinabove set forth and on the authorities herein cited, we respectfully submit that a Writ of Certiorari should not issue to the Court of Appeals for the Sixth Circuit.

Respectfully submitted,



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Dated: August 17, 1994

CERTIFICATE OF MEMBERSHIP

It is hereby certified that the attorneys whose names appear below are members of the bar of this Court.

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